

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TRACY RODGERS, :
:
Plaintiff, : **Case No.: 23-cv-2866**
:
v. : **Judge Algenon L. Marbley**
:
ARAMARK CORRECTIONAL : **Magistrate Judge Elizabeth P. Deavers**
SERVICES, et al., :
:
Defendants. :

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation (ECF No. 26) recommending that this Court dismiss this case and deny as moot the pending motion to dismiss (ECF No. 24). Plaintiff, Tracy Rodgers, brought this case alleging claims arising from an employee of Defendant Aramark Correctional Services serving Plaintiff and other inmates food removed from a trash can. Plaintiff claims this incident caused Plaintiff and several others to suffer from gastrointestinal issues. (ECF No. 5).

On July 15, 2024, Defendants David Agee, Raymond Corbett, Fredrick Epperson, William Harlan, Nurse Skye Murray, Timothy Tatman, Stephen Williams, and interested party State of Ohio (the "Moving Defendants") filed a Motion to Dismiss. (ECF No. 24). Plaintiff did not respond. On December 13, 2024, an Order to Show Cause was entered, ordering Plaintiff to show cause why the Motion to Dismiss should not be treated as unopposed and why the case should not be dismissed for want of prosecution. (ECF No. 25). Plaintiff did not respond.

On January 14, 2025, the Magistrate Judge issued the Report and Recommendation noting that there are various unserved defendants and that "since initiating this action on September 6, 2023, Plaintiff has not actively participated in the prosecution of this case in any way." (ECF No.

26 at 3). Pursuant to Federal Rule of Civil Procedure Rule 41(b), courts have inherent authority to dismiss a plaintiff's action for failure to prosecute or comply with rules of procedure or court orders. *See Fed. R. Civ. P. 41(b)*. With Rule 41(b) in mind, the Magistrate Judge recommended this Court: (1) dismiss claims against the Moving Defendants with prejudice for failure to prosecute; (2) deny the Motion to Dismiss as moot; and (3) dismiss claims against the unserved defendants pursuant to Rule 4(m) for failure to perfect service. (*Id.* at 3–4). The Report and Recommendation notified the parties that a failure to object within the applicable time period would result in a waiver of the right to have the district judge review the Report and Recommendation *de novo*. (*Id.* at 22).

This Court has reviewed the Report and Recommendation. Noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) has expired, this Court **ADOPTS** the Magistrate Judge's Report and Recommendation (ECF No. 26) as this Court's findings of facts and law. Plaintiff's claims are **DISMISSED** and, with respect to the Moving Defendants, the claims are **DISMISSED with prejudice** and their pending Motion to Dismiss (ECF No. 24) is **DENIED as moot**. This case is **CLOSED**.

IT IS SO ORDERED.



ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: March 10, 2025